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Addendum StartPage: 0

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APPLICATION OF CYPRESS GARDENS MOBILE HOME SUBDIVISION FOR AUTHORITY TO CHANGE RATES	§ § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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ORDER

This Order addresses the application of Cypress Gardens Mobile Home Subdivision to change its rates and tariff for water service. Cypress Gardens seeks to replace a flat \$35-per-month rate for water service with a new rate structure with a monthly base charge based on meter size and a three-tiered volumetric charge. The revenue requirement sought by Cypress Gardens in its application, as amended, was approximately \$56,000, nearly an \$18,500 increase. However, the rates it proposed were designed to recover only \$32,000.

Following a hearing on the merits, the State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) issued a proposal for decision in which he recommended a revenue requirement of \$44,045, as proposed by Commission Staff. The reduced revenue requirement results primarily from the disallowance of \$11,585 of expense for professional services and a reduction in the return on rate base. The ALJ also recommended adoption of the rates proposed by Cypress Garden.

The Commission agrees with the majority of the ALJ's determinations in the proposal for decision. However, the Commission cannot adopt the ALJ's recommended rate design for Cypress Gardens. To address this issue, the Commission remanded this matter to allow Commission Staff to design new rates. Accordingly, except as discussed in this Order, the Commission adopts the proposal for decision, including findings of fact and conclusions of law and approves the new rate structure calculated by Commission Staff.



I. Discussion

A. Post-hearing Procedures

After the proposal for decision was filed, Cypress Gardens filed exceptions to the proposal, in which it requested a surcharge and rate-case expenses. These requests are addressed in sections C and D below.

During its initial deliberation on the application, the Commission determined that this matter should be remanded to Docket Management to allow Commission Staff to calculate new rates. Commission Staff calculated new rates and filed them in this docket. No party filed comments or requested a hearing on these new rates. This matter is discussed in section B.

To reflect the procedures in this docket that occurred after issuance of the proposal for decision, the Commission adds new findings of fact 26 through 29, 32, and 33.

B. Rate Design

The rates proposed by Cypress Gardens and recommended by the ALJ would not recover the revenue requirement of the utility. In fixing rates for a water utility, the Commission is commanded by statute to fix the utility's overall revenues at a level to allow the utility to earn a reasonable return on investment and recover all of its reasonable and necessary operating expenses.¹ As this Commission has stated repeatedly, a utility's rates must be designed to recover the utility's revenue requirement. Consequently, the Commission is legally precluded from adopting the ALJ's recommendation on rate design.

After remand, Commission Staff calculated new rates that will produce revenues equal to Cypress Gardens' revenue requirement. This is achieved using a higher monthly base charge and higher volumetric charges in each of the three tiers. The Commission approves Commission Staff's recalculated rates in this Order.

To reflect the Commission's decision on this issue, the Commission adds new findings of fact 30 and 31.

¹ Tex. Water Code § 13.183(a)(1).

C. Request for surcharge

Cypress Gardens noticed an effective date for its proposed rates of January 1, 2018 and the proposed rates went into effect on that date. In late May, the SOAH ALJ suspended the proposed rates, which caused Cypress Gardens' rate to revert to its previous \$35-per-month flat rate. In its exceptions to the proposal for decision, Cypress Gardens requested a surcharge to recover the difference between its proposed rates and the \$35-per-month flat rate in effect during the suspension period.

If the Commission (or an ALJ) suspends the effective date of a utility's proposed rates, the Commission (and an ALJ) has authority to set interim rates during the suspensions period.² If interim rates are set and the final rate set by the Commission is higher than the interim rate, the Commission may allow the utility to recover this difference through a surcharge, or otherwise³ the rates in effect when the utility's application to change rates was filed "continue in effect during the suspension period."⁴ If the Commission does not establish interim rates, the rates in effect when the utility's application to change rates was filed "continue in effect during the suspension period."⁵ Interim rates were not fixed in this proceeding; therefore, Cypress Gardens is required by statute to charge its \$35-per-month flat rate during the suspension period and the Commission is without authority to grant the requested surcharge and denies the request.

To reflect its decision on this issue, the Commission adds new finding of fact 35 and new conclusions of law 3A and 3B.

D. Request for rate-case expenses

In its exceptions to the proposal for decision, Cypress Gardens also requested, for the first time, rate-case expenses in the amount of \$3,000. The hearing in this matter has occurred and the evidentiary record has closed and no evidence was presented related to these requested rate-case expenses. Further, it is not appropriate for Cypress Gardens to raise the issue of rate-case expenses

² *Id.* § 13.1871(g); 16 Tex. Admin. Code § 24.37.

³ Tex. Water Code § 13.1871(t); 16 Tex. Admin. Code § 24.37(i).

⁴ Tex. Water Code § 13.1871(s).

⁵ Tex. Water Code § 13.1871(s).

for the first time at this late stage of the proceeding.⁶ For these reasons, the Commission denies Cypress Gardens' request for rate-case expenses.

To reflect the Commission's denial of Cypress Gardens' rate-case expenses, the Commission adds new finding of fact 34 and new conclusion of law 8A.

E. Other Changes

The Commission modifies conclusion of law 1 to reflect that Cypress Gardens is a utility and conclusion of law 4 to properly reflect the basis of SOAH's jurisdiction. The Commission makes additional changes to findings of fact and conclusions of law to correct citations, spelling, numbering, and punctuation and for stylistic purposes to improve clarity and readability.

The Commission adopts the following findings of fact and conclusions of law:

II. Findings of Fact

The Commission adopts the following findings of fact.

1. On January 11, 2017, Cypress Gardens Mobile Home Subdivision (Cypress Gardens) filed its application for authority to change rates with the Commission.
2. On March 1, 2017, the Commission's Administrative Law Judge (ALJ) issued Order No. 2 finding the application administratively incomplete.
3. On March 28, 2017, Cypress Gardens requested a 60-day extension to file additional information requested by Commission Staff.
4. On July 14, 2017, (Valeria) Lynn Raub, the owner of Cypress Gardens, filed the additional information requested by Commission Staff, and required by Order No. 2. Ms. Raub included an affidavit of notice attesting to the fact that she provided notice of the application to her customers on December 18, 2016. In her July 14, 2017 filing, Ms. Raub also extended the effective date of the rates proposed in the application to January 1, 2018.
5. The notice provided by Ms. Raub in her July 14, 2017 filing was complete and adequate.

⁶ See 16 Tex. Admin. Code § 22.76(a)(4).

6. On January 1, 2018, Cypress Gardens's proposed rates went into effect by operation of law. The proposed rates eliminated the existing \$35 monthly flat rate and replaced it with tiered volumetric rates based on usage.
7. The case was referred to the State Office of Administrative Hearings (SOAH) on May 1, 2018.
8. On May 25, 2018, the SOAH ALJ suspended Cypress Gardens's proposed rates, and the rates reverted to the rate in effect on December 31, 2017, which was a \$35 monthly flat rate.
9. Cypress Gardens had 34 customers in the test year of January 1, 2015 through December 31, 2015. Following the intervention of twelve customers in the case, which is 34 % of Cypress Gardens' customers, the Commission set the case for hearing.
10. Commission Staff presented the only expert witnesses in this case and the only testimony that addressed the ratemaking standards included in the TWC and the Commission's rules.
11. Commission Staff witness Andrew Novak calculated Cypress Gardens's reasonable revenue requirement to be \$44,045. The ALJ concurs with Commission Staff's revenue requirement calculation.
12. Commission Staff calculated the reasonable operating expenses for Cypress Gardens to be \$24,828. Commission Staff calculated the components of Cypress Gardens's operating expenses by taking the \$36,413 requested in the application and disallowing \$11,585 in professional services for which no documentation was provided. It is appropriate to disallow these expenses, which are not documented, and the resulting amount for operating expenses is reasonable.
13. Commission Staff recommended no change to the depreciation expense recorded by Cypress Gardens during the test year, which is \$5,508. That amount is reasonable.
14. Commission Staff recommended no change to taxes other than income taxes of \$470 recorded during the test year. That amount is reasonable.
15. Commission Staff adjusted federal income taxes upward by \$2,497 to account for the 2018 tax rate, resulting in a federal income tax expense of \$2,780. That amount is reasonable.

16. Commission Staff calculated the reasonable invested capital for Cypress Gardens to be \$148,134, consisting of \$145,030 requested by Cypress Gardens, supplemented by the addition of cash working capital of \$3,104. This amount is reasonable.
17. Commission Staff calculated the appropriate rate of return for Cypress Gardens by using a hypothetical capital structure of 50% equity and 50% debt, a return on equity of 9.07%, and a cost of debt of 5.04%.
18. Commission Staff's calculation of a reasonable and appropriate return on equity of 9.07% was derived by use of the discounted cash flow methodology used by the Commission, and results in a reasonable return on equity.
19. Cypress Gardens's original cost of utility assets used and useful in providing water service is \$174,746; depreciation expense is \$5,508; accumulated depreciation amount is \$29,716; and net plant amount is \$145,030.
20. Cypress Gardens requested to transition from a flat \$35 monthly fee for water to a monthly base charge based on meter sizes, which includes no gallons, and metered, tiered usage charges. Commission Staff reviewed Cypress Gardens's requested rates and rate structure and recommended its adoption because it is reasonable and promotes water conservation, which is a Commission policy goal under 16 Texas Administrative Code (TAC) § 24.32.
21. The rate structure proposed by Cypress Gardens and recommended by Commission Staff is depicted in the following chart:

Monthly Base Charge (includes 0 gallons)		Gallonage Charge per 1,000 Gallons	
Meter Size	Rate	Usage	Rate
5/8" or 3/4"	\$42.00	0-3000	\$3.00
1"	\$105.00	3,001-10,000	\$6.00
1 1/2"	\$210.00	10,001+	\$8.50
2"	\$336.00		
3"	\$660.00		

22. The rates proposed by Cypress Gardens result in a total estimated revenue (using 34 test year customers) of \$31,941, which is less than the revenue requirement of \$44,045.

23. On June 28, 2018, SOAH ALJ Fernando Rodriguez convened a prehearing conference at which time 11 intervenors were admitted as parties. Lynn Raub participated by telephone on behalf of Cypress Gardens. Justin and Rhonda Ontiveros appeared on their own behalf. Attorney Heath Armstrong appeared on behalf of Commission Staff.
24. On October 2, 2018, Commission Staff requested mediation. The case was referred to mediation on October 11, 2018. Mediation was unsuccessful, and the case was returned to the ALJ on October 24, 2018.
25. On November 5, 2018, SOAH ALJ Fernando Rodriguez convened the hearing on the merits at the SOAH hearing facility in Austin, Texas. Ms. Raub appeared and represented herself. Ms. Ontiveros and Mr. Ontiveros appeared and represented themselves. Heath Armstrong appeared on behalf of Commission Staff. Commission Staff filed its initial brief on November 15, 2018. Ms. Raub and Ms. Ontiveros and Mr. Ontiveros filed their briefs on November 16, 2018. On November 28, 2018, Commission Staff filed its reply brief at which time the record closed.
26. On February 8, 2019, Cypress Gardens filed exceptions to the proposal for decision, in which it requested a surcharge to recover the difference between the proposed rates and the rates in effect during the applicable suspension period and also requested rate-case expenses in the amount of \$3,000.
27. On March 1, 2019, the Commission issued an order remanding the proceeding to Docket Management to allow Commission Staff to calculate rates for Cypress Gardens that are commensurate with the revenue requirement recommended in the proposal for decision. The order required that the parties to this docket should be allowed to comment on Commission Staff's recalculated rate and to request a hearing on the rate structure.
28. In Order No. 6 issued March 11, 2019, the Commission's ALJ directed Commission Staff to calculate a new rate structure for Cypress Gardens by April 1, 2019 and established a deadline of April 22, 2019 for parties to file comments or request a hearing.
29. On March 29, 2019, Commission Staff filed its response to Order No. 6 and submitted the new rate structure for Cypress Gardens that are commensurate with the revenue requirement adopted by the Commission.

30. The new rate structure calculated by Commission Staff is summarized below:

Monthly Base Charge (includes 0 gallons)		Gallage Charge per 1,000 Gallons	
Meter Size	Rate	Usage	Rate
5/8" or 3/4"	\$63.00	0-3000	\$3.70
1"	\$157.00	3,001-10,000	\$7.52
1 1/2"	\$315.00	10,001+	\$10.00
2"	\$504.00		
3"	\$945.00		

31. The new rates will produce annual revenue of \$44,045 based on 34 test-year customers.
32. No party filed comments or requested a hearing on the new rates calculated by Commission Staff.
33. In Order No. 7 issued July 3, 2019, the Commission's ALJ admitted Commission Staff's new rate structure into the evidentiary record.
34. Cypress Gardens offered no evidence related to rate-case expenses.
35. No temporary rates were established in this docket.

III. Conclusions of Law

The Commission adopts the following conclusions of law:

1. Cypress Gardens is a utility as defined in Texas Water Code (TWC) § 13.002(23).
2. The Commission has jurisdiction over this proceeding under TWC §§ 13.001, 13.041, 13.1871 and 13.1872.
3. The Commission has authority to suspend Cypress Gardens' proposed rates for 265 days beyond the proposed effective date under TWC § 13.041(g) and 16 TAC § 24.26.
- 3A. Cypress Gardens was required to charge the \$35-per-month flat rate during the suspension period in this docket.

- 3B. The Commission cannot grant Cypress Garden a surcharge to recover the difference between its proposed rates and the \$35-per-month flat rate in this docket. TWC § 13.1871(s) and (t).
- 4. SOAH has jurisdiction over matters relating to the conduct of this proceeding in accordance with chapter 2003 of the Texas Government Code.
- 5. Cypress Gardens has the burden of proof to establish that its proposed rates are just and reasonable under TWC § 13.184(c) and 16 TAC § 24.12.
- 6. The rates fixed in this Order are just and reasonable as required by TWC § 13.182.
- 7. The rates fixed in this Order allow Cypress Gardens a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public under TWC § 13.183.
- 8. The rates and rate structure fixed in this Order are nondiscriminatory, are just and reasonable, and otherwise comply with TWC §§ 13.181 through 13.192 and 16 TAC §§ 24.25 through 24.44, and Commission policy.
- 8A. Cypress Garden did not timely request rate-case expenses and failed to prove that such expenses are just, reasonable, necessary and in the public interest. 16 TAC § 24.44.

IV. Ordering Paragraphs


In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

- 1. The Commission approves the new calculated rates filed by Commission Staff on March 29, 2019, effective the date of this Order.
- 2. Within 10 days of the issuance of this Order, Commission Staff must file a copy of Cypress Gardens's tariffs with Central Records to be marked Approved and kept in the Commission's tariff book.
- 3. Beginning with the next billing cycle after the date of this Order, Cypress Gardens must charge rates approved in this Order.

4. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 25th day of September 2019.

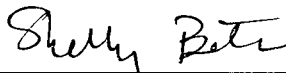
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